

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Michael D. James, #294004,

PLAINTIFF

v.

Daniel Cotter, D. Burcinski and S. Duffy,

DEFENDANTS

Case No. 9:14-cv-4518-TLW-BM

**ORDER**

Plaintiff Michael D. James, an inmate proceeding *pro se*, originally filed this action in the South Carolina Court of Common Pleas alleging a violation of his civil rights. (ECF Nos. 1-1 & 19.) Defendants removed the action to this Court on November 25, 2014. (ECF No. 1.) The matter now comes before the Court for review of the Report and Recommendation (R&R) filed on August 26, 2015, by Magistrate Judge Marchant, to whom this case was assigned. (ECF No. 85.) In the R&R, the magistrate judge recommends that Defendants' Motion for Summary Judgment (ECF No. 61) should be granted and that this action should be dismissed without prejudice. Plaintiff filed objections to the R&R on September 8, 2015. (ECF Nos. 89 & 89-1.) Defendants filed a reply on September 24, 2015. (ECF No. 94.) Plaintiff filed a sur-reply on October 7, 2015. (ECF No. 95.) This matter is now ripe for decision.

In reviewing the R&R, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections . . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court

is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

*Wallace v. Hous. Auth. of City of Columbia*, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in *Wallace*, the Court reviewed, *de novo*, the R&R and the objections. The Court notes that in Plaintiff's objections, he does not deny that he failed to exhaust his administrative remedies; he asserts that his case was originally filed in state court and requests a remand to state court. (*See* ECF Nos. 89, 89-1, 95.) After careful review of the R&R, the objections, the record and the filings of the parties, the R&R is **ACCEPTED**. Plaintiff's objections are **OVERRULED**. For the reasons stated by the magistrate judge, Defendants' Motion for Summary Judgment (ECF No. 61) is hereby **GRANTED**, and this action is **DISMISSED** without prejudice.

Additionally, Plaintiff's Motion to Strike (ECF No. 84) and Motion for Reconsideration (ECF No. 87) are **DENIED** as **MOOT**.

**IT IS SO ORDERED.**

s/ Terry L. Wooten  
Terry L. Wooten  
Chief United States District Judge

December 18, 2015  
Columbia, South Carolina